

1 Ian K. Boyd (admitted *pro hac vice*)
Email: iboyd@sideman.com
2 Ellen P. Liu (admitted *pro hac vice*)
Email: eliu@sideman.com
3 SIDEMAN & BANCROFT LLP
One Embarcadero Center, Twenty-Second Floor
4 San Francisco, California 94111-3711
Telephone: (415) 392-1960
5 Michael J. McCue
Nevada Bar No. 6055
6 LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
7 Telephone: 702.949.8200
8 Email: mmccue@lrrc.com
9 Attorneys for ROCKSTAR, INC.

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 ROCKSTAR, INC., a Nevada corporation,
13 Plaintiff,
14 v.
15 CELSIUS HOLDINGS, INC., a Florida
corporation,
16 Defendant.

Case No. 2:18-cv-02371-GMN-NJK
**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

18 1. PURPOSES AND LIMITATION

19 Disclosure and discovery activity in this action are likely to involve production of
20 confidential, proprietary, or private information for which special protection from public disclosure
21 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
22 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
23 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
24 or responses to discovery and that the protection it affords from public disclosure and use extends
25 only to the limited information or items that are entitled to confidential treatment under the
26 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
27 this Stipulated Protective Order does not entitle them to file confidential information under seal;
28 Local Rule IA 10-5 sets forth the procedures that must be followed and the standards that will be

1 applied when a party seeks permission from the Court to file material under seal.

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
6 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
7 Civil Procedure 26(c).

8 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support
9 staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or items that it
11 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
14 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
15 transcripts, and tangible things), that are produced or generated in disclosures or responses to
16 discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
18 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
19 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,
20 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
21 competitor.

22 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
23 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
24 Non-Party would create a substantial risk of serious harm that could not be avoided by less
25 restrictive means.

26 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
27 entity not named as a Party to this action.

28 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action

1 but are retained to represent or advise a party to this action and have appeared in this action on
2 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
8 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
9 storing, or retrieving data in any form or medium) and their employees and subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material (as
16 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
17 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

19 However, the protections conferred by this Stipulation and Order do not cover the following
20 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
21 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
22 publication not involving a violation of this Order, including becoming part of the public record
23 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
24 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
25 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
26 Protected Material at trial shall be governed by a separate agreement or order.

27 4. DURATION

28 Even after final disposition of this litigation, the confidentiality obligations imposed by this

Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

1 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” to each page that contains protected material. If only a portion or portions of the material on
3 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
5 of protection being asserted.

6 A Party or Non-Party that makes original documents or materials available for inspection
7 need not designate them for protection until after the inspecting Party has indicated which material it
8 would like copied and produced. During the inspection and before the designation, all of the material
9 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and
11 produced, the Producing Party must determine which documents, or portions thereof, qualify for
12 protection under this Order. Then, before producing the specified documents, the Producing Party
13 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” to each page that contains Protected Material. If only a portion or
15 portions of the material on a page qualifies for protection, the Producing Party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
17 specify, for each portion, the level of protection being asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
19 Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony and specify the level of protection being asserted. When it is
21 impractical to identify separately each portion of testimony that is entitled to protection and it
22 appears that substantial portions of the testimony may qualify for protection, the Designating Party
23 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
24 to have up to 21 days to identify the specific portions of the testimony as to which protection is
25 sought and to specify the level of protection being asserted. Only those portions of the testimony that
26 are appropriately designated for protection within the 21 days shall be covered by the provisions of
27 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or
28 up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated

1 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
3 other proceeding to include Protected Material so that the other parties can ensure that only
4 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
6 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 Transcripts containing Protected Material shall have an obvious legend on the title page that
9 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
10 (including line numbers as appropriate) that have been designated as Protected Material and the level
11 of protection being asserted by the Designating Party. The Designating Party shall inform the court
12 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
13 period for designation shall be treated during that period as if it had been designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
15 expiration of that period, the transcript shall be treated only as actually designated.

16 (c) for information produced in some form other than documentary and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
18 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
20 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
21 portion(s) and specify the level of protection being asserted.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. Upon timely correction of a
25 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
26 accordance with the provisions of this Order.

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
2 designation is necessary to avoid substantial unfairness, unnecessary economic burdens, or a
3 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
4 confidentiality designation by electing not to mount a challenge promptly after the original
5 designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
7 by providing written notice of each designation it is challenging and describing the basis for each
8 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
9 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
10 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
11 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
12 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
13 Party must explain the basis for its belief that the confidentiality designation was not proper and
14 must give the Designating Party an opportunity to review the designated material, to reconsider the
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
16 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
17 has engaged in this meet and confer process first or establishes that the Designating Party is
18 unwilling to participate in the meet and confer process in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
20 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
22 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
23 accompanied by a competent declaration affirming that the movant has complied with the meet and
24 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
25 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
26 automatically waive the confidentiality designation for each challenged designation. In addition, the
27 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
28 good cause for doing so, including a challenge to the designation of a deposition transcript or any

1 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
2 competent declaration affirming that the movant has complied with the meet and confer
3 requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the Designating
5 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
6 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
7 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
8 retain confidentiality as described above, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party's designation until the court
10 rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
15 the categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a
19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
21 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
25 information for this litigation;

26 (b) the officers, directors, and employees of the Receiving Party to Whom disclosure
27 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
3 to Be Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
12 bound by the court reporter and may not be disclosed to anyone except as permitted under this
13 Stipulated Protective Order.

14 (g) the author or recipient of a document containing the information or a custodian or
15 other person who otherwise possessed or knew the information.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
22 information for this litigation;

23 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for
24 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
25 A);

26 (c) the Court and its personnel;

27 (d) court reporters and their staff, professional jury or trial consultants, and
28 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (e) the author or recipient of a document containing the information or a custodian or
3 other person who otherwise possessed or knew the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a
10 copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in
12 the other litigation that some or all of the material covered by the subpoena or order is subject to this
13 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
19 determination by the court from which the subpoena or order issued, unless the Party has obtained
20 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
21 seeking protection in that court of its confidential material – and nothing in these provisions should
22 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
23 directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
25 LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this

1 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
2 should be construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce
4 a Non-Party's confidential information in its possession, and the Party is subject to an agreement
5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality agreement with a Non-
8 Party;

9 2. promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
11 description of the information requested; and

12 3. make the information requested available for inspection by the Non-
13 Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court
15 within 14 days of receiving the notice and accompanying information, the Receiving Party may
16 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
17 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
18 possession or control that is subject to the confidentiality agreement with the Non-Party before a
19 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden
20 and expense of seeking protection in this court of its Protected Material.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
23 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
24 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
25 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
26 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
27 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
28 Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 See order issued concurrently herewith.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
2 the Protected Material is returned or destroyed, the Receiving Party must submit a written
3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
4 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material
5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
10 and expert work product, even if such materials contain Protected Material. Any such archival copies
11 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP SRIPLAW

15 By: /s/ Michael J. McCue
16 Michael J. McCue

By: /s/ Jonah Grossbardt
Jonah Grossbardt

17 Attorneys for Plaintiff
18 Rockstar, Inc.

Attorneys for Defendant
Celsius Holdings, Inc.

19 PURSUANT TO STIPULATION, **IT IS SO ORDERED.**
20
21
22
23
24
25
26
27
28


United States Magistrate Judge

Dated: July 26, 2019